

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte PUNEET NANDA

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Appeal No. 2006-2029  
Application No. 10/351,104

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ON BRIEF

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Before KIMLIN, PAK and WALTZ, Administrative Patent Judges.  
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 21-23.  
Claim 21 is illustrative:

21. A toothbrush comprising:

a handle having a base, a body, and a head, the body being  
made of a clear material;

a source of electrical power;

the body having a first section and a second section forming  
an oblique angle, the first section having a chamber  
therein;

a projector of a beam of light connected to the source of electrical power and being located within the chamber;

a plurality of bristles attached to the head;

a grip attached to the base;

a switch between the source of electrical power and the projector for activating the projector to emit the beam of light, the switch being a flexible member attached to the base;

a timing circuit connected to the projector and being capable of limiting the operation of the projector of a beam of light to a predetermined period of time;

a plurality of metal flakes embedded within the clear material of the body, the metal flakes being capable of reflecting the beam of light in a plurality of directions, whereby the beam of light from the projector will pass thorough the clear material and will be reflected in a plurality of directions by the metal flakes externally o the clear material.

The examiner relies upon the following references as evidence of obviousness:

Salmon et al. (Salmon)	6,202,242	Mar. 20, 2001
Derosé	US 2003/0079387 A1	May 1, 2003
Robinson et al. (Robinson)	6,606,755	Aug. 19, 2003

Appellant's claimed invention is directed to a toothbrush comprising a body made of a clear material having a plurality of metal flakes embedded therein which reflect a beam of light from a projector located within the body of the toothbrush. The toothbrush also comprises a timing circuit connected to the projector for limiting the operation of the projector. According

to the present specification, the claimed tooth brush maximizes the amount of light transmitted towards the user and encourages the user to brush their teeth (see page 1 of specification).

Appealed claims 21-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Salmon in view of Robinson and Derosé.<sup>1</sup>

Appellant has not presented separate arguments for claims 22 and 23. Accordingly, all the appealed claims stand or fall together with claim 21.

We have thoroughly reviewed each of appellant's arguments for patentability. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of Section 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejection for essentially those reasons expressed in the answer, and we add the following primarily for emphasis.

There is no dispute that Salmon, like appellant, discloses a toothbrush having a portion of its body made of a clear material

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<sup>1</sup>The examiner states at page 2 of the answer that "the 103 rejection of Salmon in view of Robinson and further in view of Ishiharada is being dropped."

having a light refractive additive therein for dispersing a beam of light emitted by a projector within the toothbrush. Although Salmon is silent with respect to the particular light refractive additive that is included in the body of the toothbrush, we agree with the examiner that it would have been obvious for one of ordinary skill in the art to employ the metal flakes of Derosé as the light refractive additive in the toothbrush of Salmon. While Derosé is directed to a decorative display rather than a toothbrush, we agree with the examiner that Derosé evidences that it was known in the art that it is desirable to scatter the light from a glaring point of light in a pleasing manner by the use of metal flakes. Accordingly, we do not subscribe to appellant's argument that Derosé is non-analogous since it is not reasonably pertinent to the problem concerning the present invention and Salmon. Since one of the stated purposes of Salmon is to create an exciting visual effect with the glowing toothbrush to encourage children to brush their teeth, we find that Derosé's teaching of using metal flakes to provide a pleasing light would be pertinent to the objective of Salmon. Also, while appellant contends that the purpose of Salmon's toothbrush is to create a glowing illumination of the mouth during brushing and cleaning, while the problem solved by appellant is directing light from the

toothbrush handle to the user's eye during brushing, we find that an acknowledged object of Salmon to provide an exciting visual effect during brushing corresponds to appellant's direction of light to the user's eye.

We are also not persuaded by appellant's argument that "[t]he Examiner's statement is inaccurate [because] [t]he metal flakes of Appellant's invention are not used for ornamental purposes" (page 4 of the reply brief, first paragraph). Appellant's statement at page 1 of the specification that "[a] still further objective of the present invention is to provide a novel device to encourage a user to brush their teeth" belies appellant's argument that the claimed toothbrush is not used for ornamental purposes also.

Appellant's principal brief does not contest the examiner's legal conclusion that it would be obvious to incorporate the timing circuit of Robinson "into the brush of Salmon to signal to the users when a recommended brushing time interval has started and ended, so as to avoid injury to teeth and gums" (page 4 of answer, second paragraph). Appellant's reply brief, however, presents arguments against the obviousness of using Robinson's timing device in the toothbrush of Salmon. Rather than remand the application to the examiner to elicit further comment on this

point, we are confident that it would have been obvious for one of ordinary skill in the art to include such a timing element in the toothbrush of Salmon. Appellant's specification, at page 1, states that "there is a need for indicating an increment of time in which a user is brushing their teeth." To the extent that such a need was known in the art, we find that Robinson evidences the obviousness of employing the claimed timing element to satisfy the need. In our view, both the problem and its solution would have been readily apparent to one of ordinary skill in the art. In re Ludwig, 353 F.2d 241, 243-44, 147 USPQ 420, 421 (CCPA 1965).

As a final point, we note that appellant bases no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the prima facie case of obviousness established by the examiner.

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In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

EDWARD C. KIMLIN	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
CHUNK K. PAK	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
	)	
	)	
THOMAS A. WALTZ	)	
Administrative Patent Judge	)	

ECK:hh

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